



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act*.

The tenant, her advocate H.B. and landlord attended the hearing by way of conference call. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenant confirmed receipt of the landlord's 1 Month Notice to End Tenancy for Cause, while the landlord confirmed receipt of the tenant's application for dispute and evidentiary package. The tenant acknowledged receiving the landlord's evidentiary package. I find both parties were duly served in accordance with the *Act*.

### Preliminary Matter

The landlord explained she had inadvertently served the tenant with two separate 1 Month Notices to End Tenancy. One dated September 2, 2019 and another dated October 31, 2019. The tenant acknowledged receiving both notices but disputed only the September 2, 2019 because the October 31, 2019 notice was given to her following her service of the hearing documents presently before me. I confirmed with the landlord that the October 31, 2019 was only served on the tenant due to landlord's error and that the notices related to the same matter in dispute. Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to dispute both notices before me.

### Issue(s) to be Decided

Can the tenant cancel the landlord's Notice to End Tenancy?

### Background and Evidence

The tenant explained that the tenancy began in 2016. Rent is currently \$700.00 per month and the tenant said she paid a security deposit of \$350.00 to the property's

original owner. The current landlord disputed having received any security or pet deposit.

In September and October 2019 the tenant received separate 1 Month Notices to End Tenancy for Cause ("1 Month Notice"). The reasons cited on the 1 Month Notices were listed as follows:

- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park; and
- Tenant has not done required repairs of damage to the unit/site.

The landlord explained she had numerous, significant concerns related to the state of the property. Specifically, the landlord alleged the property had been subject to a significant amount of damage as a result of the tenant's actions. The landlord raised concerns about the presence of a dog on the property (pit-bull) and the landlord cited the attendance of the police at the home on two occasions as further reasons for the issuance of the 1 Month Notice. The landlord claimed the tenant had damaged the furnace and flooring, allowed her pets to defecate and urinate in the unit, and caused a significant amount of damage to the walls. Furthermore, the landlord accused the tenant of allowing the grass/landscaping to go unattended and overall said the tenant failed to maintain the house.

The landlord described the property as being in "good" condition when it was rented to the tenant, describing the home as built in 1965 by the government. The landlord recalled that some repairs had been made to the property but could not cite any specific dates when this work had been performed.

The tenant disputed all allegations presented by the landlord in the 1 Month Notice and at the hearing. The tenant argued the property was in very poor condition and a majority of the matters raised by the landlord were the result of normal wear and tear, or had been damaged prior to her occupation.

Both parties presented conflicting evidence in support of their positions. The landlord provided an email from the property's former care taker, R.S., dated October 17, 2019 which said, "I can verify that these damages did not exist prior to the present tenants moving in. If they had, we would never have rented the unit. The floors were in good condition, the bathroom had all its fixtures in place, the rust stains and damage to the tub and fixtures did not exist, the drywall was not damaged, there were no drawings on

the walls, the basement was not damaged, no cut outs were made in the heat ducts, the makeshift venting (which was not up to code) for the woodstove did not exist.”

The tenant presented an email dated November 3, 2019 from the previous owner which said, “You and I had agreed that you would rent the house ‘as is’ as it needed a lot of repairs and you would be responsible for supplying or repairing the appliances. The furnace system hadn’t worked for several years, but the house did have a wood stove as a source of heat. I was also aware you had pets and we agreed that there was no pet deposit required.” Additionally, the tenant included a letter from her social worker dated November 4, 2019 which noted MCFD social workers attended the home on two different occasions, (June 29, 2019 & October 22, 2019) and found “no concern noted with the state of the home” and “did not observe any safety hazards that would result in a child protection concern. Social workers did not observe any animal feces on the floor and did not notice any smells of cat urine.”

The tenant addressed the landlord’s concerns related to the presence of a dog on the property, noting she had signed a tenancy agreement with the previous owner that took account her dog. Additionally, the tenant argued the mere attendance of police to the property was not the result of any malicious actions and alleged their visit to the property was in fact initiated by the current landlord/owner.

### Analysis

Residential Tenancy Rule of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.” In this case, the landlord must demonstrate why she feels the Notice to End Tenancy is valid.

The landlord presented a significant amount of evidence regarding her allegation that the tenant had failed to maintain the property in an appropriate manner and had therefore placed the property in jeopardy. As noted previously, the landlord issued a 1 Month Notice citing; Tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk; Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park; and Tenant has not done required repairs of damage to the unit/site.

After considering the testimony and submissions of both parties and following a close review of all evidence submitted, I find the landlord has failed to demonstrate that the 1 Month Notice to End Tenancy should be enforced. I find much of the evidence presented by the landlord in support of the 1 Month Notice to be inconsistent with credible evidence provided by the tenant that the property in question was in a poor state of repair prior to her occupation. I am particularly influenced by an email dated November 3, 2019 written by the former owner which describes the property as “need[ing] a lot of repairs.” This statement contradicts the evidence and testimony presented by the landlord. Additionally, all parties described the home as “old” with the landlord confirming its construction in 1965. This means that any and all associated materials/applicants would be well beyond their “useful life” as described by section 1 of the *Residential Tenancy Policy Guideline*. The landlord presented no evidence that the presence of the police at the property was related to any significant danger associated with the tenant, and, I find the tenancy agreement supplied by the tenant to be silent on any restrictions around the presence of pit bulls, nor was any evidence presented that this animal in question has presented a danger. Finally, the tenancy agreement is silent on responsibilities related to landscaping.

For these reasons, I dismiss the 1 Month Notice issued September 2, 2019 and October 31, 2019. This tenancy shall continue until it is ended in accordance with the *Act*.

### Conclusion

The 1 Month Notice dated September 2, 2019 is dismissed.

The 1 Month Notice dated October 31, 2019 is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 28, 2019

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Residential Tenancy Branch